The 12th July, 1967

No. 28HA/119/153R.—Whereas the Governor of Haryana is satisfied that land specified below is needed by Government, at public expenses, for a public purpose, namely for constructing Agroha-Gorkhpur-Jandli Road, it is hereby declared that the land described in the specification below is required for the aforesaid purpose.

This declaration is made under the provision of section 6 of the Land Acquisition Act, 1894, to all whom it may concern and under the provisions of section 7 of the said Act, the Land Acquisition Collector, Haryana, P.W.D., B. & R., Ambala Cantt., is hereby directed to take order for the acquisition of the said land.

Plans of the land may be inspected in the office of the Executive Engineer, Construction Division, Sirsa and Land Acquisition Collector, Haryana, P.W.D., B. & R. Branch, Ambala Cantt.

SPECIFICATION

District	Tehsil	Locality (Village or Revenue Estate)	Area in acres	Description
1	2	3	4	5
Hissar	Fatehabad	Siwani	14.88	As demarcated at site

T. S. LAMBA,

Superintending Engineer,
Hissar Circle, P.W.D., B. & R. Branch.

LABOUR DEPARTMENT

The 18th July, 1967

No. 6283-3Lab-67/20825.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, in respect of the dispute between the workmen and management of M/s Bhiwani Textile Mills, Bhiwani:—

BEFORE SHRI K.L. GOSAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, CHANDIGARH

Reference No. 38 of 1967

between

THE WORKMEN AND THE MANAGEMENT OF M/S BHIWANI TEXTILE MILLS, BHIWANI

Present:—

Shri B.R. Ghaiye and Shri N.M. Jain, for the management.

Shri Sagar Ram Gupta and Shri Makhan Singh, for the workmen.

AWARD

An Industrial Dispute having come into existence between the workmen and the management of M/s Bhiwani Textile Mills, Bhiwani, the same was referred for adjudication to this Tribunal under clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947,—*vide* Haryana Government Notification No. 130-SF-III-Lab-67/4635, dated 3rd March, 1967. The 2 items of dispute as mentioned in the said notification are as under:—

(1) Whether the workmen are entitled to extra wages for 15th August, 1965? If so, with what details?

(2) Whether Shri Balmukand is entitled to an increase in wages as a result of installation of more looms? If so, with what details?

Usual notices were issued to the parties and in response to the same the workmen filed their statement of claims and the management filed their written statement to the

same. The pleadings of the parties gave rise to the following 3 issues which were framed by me on 28th April, 1967:—

(1) Whether the reference is not competent for the reasons given in preliminary objections 1, 2 and 3 in the written statement of the management?

(2) Whether the workmen are entitled to extra wages for 15th August, 1965? If so, with what details?

(3) Whether Shri Balmukand is entitled to an increase in wages as a result of installation of more looms? If so, with what details?

The parties have led their evidence in respect of the same and their representatives have also addressed their arguments to me. Before recording my findings on the various issues it is necessary to state that the Mill in question did not use to work on Sundays for many years but started working as such some 3 or 4 years back. An industrial dispute arose between the parties as to whether the Mill should be permitted to work on Sundays and the same was referred for adjudication to the Industrial Tribunal, Punjab. The said Tribunal gave an award permitting the management to work the Mill on Sundays but enjoining upon them to pay some extra wages to those workmen who were called upon to work on each Sunday. As a necessary consequence of it the days for weekly rest had to be fixed for each of the workmen and it appears that the Mill fixed the said days. It is in evidence in the present case and in fact it is not denied by the management that a day for weekly rest for each of their workmen was fixed and the said day was mentioned on the attendance cards of each of the workmen. Entry regarding the said day was also made in the Wage Register maintained by the Mills. The workmen used to get the weekly rests according to the days fixed for each of them. It so happened that 15th of August, 1965 fell on a Sunday. The Mill had to remain closed on the said date because it was a National and Festival Holiday. The Mill actually remained closed on the said date and none of the workmen was put on duty on the saic day. The management did not allow to the workmen any weekly rest in the week commencing with the 12th and ending with the 18th of August, 1965 (both inclusive) and this they did on the plea that 15th August had been utilized by the workmen as the weekly rest day. The case of the workmen is that the management was not justified in refusing to give them the weekly rest in that week on the ground that 15th August, 1965 could be treated as a day for the weekly rest. It is urged on their behalf that 15th August was otherwise a National and Festival paid holiday and it could not be substituted for the weekly rest day in the week mentioned above. The case of the management on the other hand is that they could give any substitute weekly rest day instead of the day fixed for each of the workmen. In light of what has been said above I record my findings on the various issues as under:—

Issue No. 1.—The preliminary objection raised by the management is that the term of reference is in respect of extra wages for the 15th of August, 1965 and since the term "Wage" means "remuneration for work done" and since it is admitted that the workmen did not do any work on the 15th of August, 1965, the claim for wages for that date is not entertainable. After giving my careful consideration to the matter I do not find any force in this objection. The workmen in substance claim their wages for the weekly rest day in the week commencing with the 12th of August, 1965 and ending on the 18th of August, 1965. Their case is that since 15th August, 1965 was to be a National and Festival Holiday the management should pay wages for that day on the short ground that the said day could not be substituted for the weekly rest day. This issue is decided against the management.

Issue No. 2.—As I have said above it is not denied by the management that they have fixed a weekly rest day for each of their workmen and have specified the same on the attendance card of each of them and also on the Wage Register maintained by them. Obviously the management could not have changed the weekly rest day so as to deprive the workmen of their right to have 15th August as National and Festival paid holiday. The action of the management did deprive the workmen of their wages for the 15th of August, 1965 because instead of treating it as a paid National and Festival holiday, they turned it into the weekly rest day for all the workmen. As a result of treating 15th of August, 1965 as weekly rest day, some of the workmen got their weekly rest after four days and some others got the same after 11 or 12 days. A workman who had his weekly rest on the 11th of August got it again on 15th of August but did not get the next rest till the 25th of August because of the fact that 18th of August which was to be the rest day for him was not allowed to him as such. I am definitely of the opinion that the management was not justified in treating the 15th of August, 1965 as the weekly rest day and in depriving the workmen of their weekly rest days as previously fixed for each of them. The workmen are in my opinion entitled to wages for the 15th of August, 1965. The management is directed to pay one day's extra wages for that date to all their workmen excepting those who were otherwise to have their weekly rest on Sunday, the 15th of August, 1965.

Issue No. 3.—The management have raised a preliminary objection that in view of a previous settlement between the parties, the dispute covered by this item cannot be raised by the workmen. This objection need not be decided because I am convinced that even on merits Shri Balmukand is not entitled to any increase in wages. The only evidence which

the workmen have led on this point consists of a statement of Balmukand himself. His case is that previously there were 284 powerlooms in the Mill but the number of looms has now increased to 336. It is not his case that he has to work for any extra time and I refuse to believe that his work-load has in anyway increased. R.W. 1 Shri G.R. Mangla, General Manager of the Mill, has stated on oath that in other Mills each running fitter looks after 500 looms. The mere fact that the number of looms has increased by a few does not in my opinion justify any claim for higher wages. The demand covered by this item is accordingly dismissed. No order as to costs.

Dated 7th July, 1967.

K. L. GOSAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Chandigarh.

No. 811, dated Chandigarh, the 10th July, 1967

The award be submitted to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required by section 15 of the Industrial Disputes Act, 1947.

K. L. GOSAIN,

Presiding Officer,
Industrial Tribunal, Haryana,
Chandigarh.

No. 6249-3Lab-67/20827.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, in respect of the dispute between the workmen and management of Messrs J.N. Sharma & Sons, Faridabad:—

BEFORE SHRI K.L. GOSAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, CHANDIGARH

Reference No. 27 of 1967

between

THE WORKMEN AND THE MANAGEMENT OF MESSRS J.N. SHARMA & SONS, FARIDABAD

Present:

Shri R.C. Sharma, for the management.
Shri Amrit Rai Handa, for the workmen.

AWARD

An Industrial Dispute having come into existence between the workmen and the management of Messrs J.N. Sharma & Sons, Faridabad, the same was referred to this Tribunal for adjudication under clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947,—*vide* Haryana Government notification No.148-SF-III-Lab-66/1943, dated 21st January, 1967.

Usual notices were issued to the parties, in response to which the workmen filed their detailed statement of claims and the management filed their written statement to the same. Parties were then given opportunity to adduce their evidence in support of their respective cases and on conclusion of the same the representatives of both the parties also addressed their arguments to me.

The only item of dispute as mentioned in the notification is as under :—

Whether a gratuity scheme should be enforced in the factory ? If so, with what details and from what date ?

The main pleas which have been taken by the management against the introduction of the said scheme are :—

(a) that no gratuity scheme is in force in similar concern in the Region and it cannot, therefore, be introduced in this concern.

(b) that under the Standing Orders one retiral benefit namely the Provident Fund is already in force in the factory and the second retiral benefit in the form of gratuity should not be made available to the workmen.

(c) that the concern in question is not able to bear the financial burden of the proposed scheme.

I shall discuss the aforesaid points under separate heads as given above :—

Regarding (a).—It has not been proved by the workmen that a gratuity scheme is in force in any other engineering concern in Faridabad. There is no doubt that no other concern in Faridabad is manufacturing the same items which this concern is manufacturing

but it is not denied by the workmen that there are many other engineering concerns in Faridabad and in none of them, a gratuity scheme has yet been enforced This by itself, however, does not create any legal bar in enforcing the scheme in the concern in question if it can be found that this unit has financial capacity to bear the burden In Gujrat Engineering Company and Ahmadabad Industrial Workers Union, 1961-II-LLJ, page 660, a similar plea was taken and their Lordships of the Supreme Court observed as follows with regard to it :—

> "As to the other contention, namely, that gratuity schemes are not in force in similar other concerns, the tribunal rightly pointed out that the proper way to look at the problem is that if a gratuity scheme can be introduced in a concern taking into account its financial position it should not be refused simply because no gratuity scheme is in force in similar other concerns. So far as other concerns are concerned the gratuity scheme can also be introduced later, if there is demand by the workmen and if the financial position justifies it."

A similar plea was also taken in another case between the Garment Cleaning Works and its Workmen, 1961-I-LLJ, page 513, and their Lordships of the Supreme Court observed at page 515 of the report as under :—

> "In regard to the direction as to the gratuity scheme the argument which has been urged before us by Mr. Sen is that the problem of starting such scheme should have been considered on an industry-cum-region basis and considerations relevant to the said basis should have been taken into account. In support of this argument he has relied upon a judgment of this court in Bharat Khand Textile Manufacturing Co. Ltd. and others *versus* Textile Labour Association, Ahmadabad (1960-II-LLJ-21). In that case the industrial court had no doubt dealt with a claim for gratuity made by the workmen on the industry-cum-region basis, and an attack against the validity of the said approach made by the employer in regard to the scheme was repelled by this Court. It would, however, be noticed that all that this court decided in that case was that it was erroneous to contend that a gratuity scheme could never be based on industry-cum-region basis, and in support of this conclusion several considerations were set forth in the judgments. It is clear that it is one thing to hold that the gratuity scheme can, in a proper case, be framed on industry-cum-region basis, and another thing to say that industry-cum-region basis is the only basis on which gratuity scheme can be framed. In fact, in a large majority of cases gratuity schemes are drafted on the basis of units and it has never been suggested or held that such schemes are not permissible. Therefore, the decision in the case of Bharat Khand Textile Manufacturing Co. Ltd. 1960-II-LLJ (*Supra*) does not support the proposition for which Mr. Sen contends."

The above authorities clearly lay down the proposition that the mere fact that gratuity schemes are not in force in similar concerns in the region is by itself no bar to the enforcement of a gratuity scheme in a unit which is capable of bearing its financial burden and when the circumstances of the case justify the same.

Regarding (*b*).—Admittedly a scheme under the Employees Provident Fund Act is in force in the unit in question This also does not create any legal bar in the way of enforcing a gratuity scheme in the unit if the unit can bear the burden of both the retiral benefits. This point was considered by their Lordships of the Supreme Court in Wenger and Co *versus* their workmen (1963-II-LLJ, page 403) and it was held in that case that "object intended to be achieved by the provident fund scheme is not the same as the object of the gratuity scheme and in any case, where the financial position of the employer justifies the introduction of both benefits, there is no reason why the employees should not get the benefit of both the provident fund scheme and the gratuity scheme." A similar view was taken by their Lordships in Bharat Khand Textile Manufacturing Co. and Textile Labour Association, Ahmadabad, 1960-II-LLJ, page 21, and also in Sone Valley Portland Cement Company's case, 1962-II-LLJ 218.

Regarding (*c*).—The real point that falls for decision is whether the unit in question is able to bear the burden of the gratuity scheme and this is a pure question of fact. Both the parties have led evidence on this point and after giving my careful consideration to the evidence I am definitely of the opinion that the unit in question is able to bear the burden of a gratuity scheme. The management have produced their balance-sheets for the years 1961, 1962, 1963, 1964 and 1965 and they are Ex. R-1, R-2, R-3, R-4 and R-5, respectively. Their financial year coincides with the calendar year. They have also produced the copies of the assessment orders for the years 1956-57 to 1962-63. These documents give an overall picture of the financial position of the concern in question. In the year of

assessment 1956-57 which related to the accounting year 1955, the concern suffered a loss of Rs 71,798 but they had added machinery to their factory in the said year which was of the value of Rs 1,44,975. For the assessment year 1957-58 they were assessed at an income of Rs 62,682 and it included the salaries paid to the partners of the concern and which amounted to Rs 26,400. In the said year they had added machinery worth Rs 35,836. For the assessment year 1958-59 their net income was found to be Rs 30,442. For the assessment year 1959-60, their net income was found to be Rs 63,999 and they had added machinery to their factory in the said year which was worth Rs 50,326. For the assessment year 1960-61, their net income was found to be Rs 1,39,754 and they had added machinery in that year which was worth Rs 11,000. For the assessment year 1961-62, they were assessed at a net income of Rs 1,48,460 and they had added machinery in that year which was worth Rs 31,541. For the assessment year 1962-63, they were assessed at an income of Rs 2,22,153 and they had added machinery worth Rs 8,500 in the said year. The concern in question has not so far been assessed for the subsequent years and cases for the said assessments are said to be yet pending. The balance-sheets that they have filed for the accounting years 1962, 1963, 1964 and 1965 show that they earned Rs 21,568.20 Paise in 1962, Rs 25,603.24 in 1963 and Rs 30,591.00 in 1964 and Rs 10,739.68 in 1965. These balance-sheets are, however, yet to be scrutinized by the Income Tax Department and admittedly they include heavy amounts of salaries drawn by the partners in each year which the Income Tax Department has never allowed to the concern in past. It is significant that in the balance-sheets that they have produced for the year 1961 they showed a profit of Rs 73,066.51 while the net income which the Income Tax Department assessed for the said year amounted to Rs 2,22,153. The Department has been admittedly assessing the income of the concern in all the past years at figures which were much above the figures of the profits shown in the respective balance-sheets and this shows that the profits shown in the balance-sheets were below the actual profits. The management have produced Shri V.D. Punj Manager of their concern, who has stated that in the contract which they got for the supply of Electric Poles to the Government they are suffering losses for the last two years. No documentary evidence has been led to prove this point but assuming that this is so, it can at the most be taken only as a temporary difficulty. What the industrial adjudication is to see in such cases is the overall picture of the financial position of the concern and not merely the fact whether owing to some temporary difficulties the management has not been able to make profits in the last one or two years.

The management have filed charts to show that the burden which the gratuity scheme asked for by the workmen will place on them will amount to Rs 1,67,557.40. This is admittedly based on the assumption that all the workmen may choose to retire on the same date or may die on the same day or the concern in question may close down on any particular day. This, however, is not the practical way of looking at the things. In Sone Valley Portland Cement Co. and its workmen, 1966-I-LLJ, page 218, their Lordships of the Supreme Court observed as under :—

> "There are two ways of looking at the matter of financial burden of the gratuity scheme. One is to capitalize the burden on universal basis and that would naturally show theoretically that the burden would be heavy. The other is to look at the scheme with respect to its practical aspect which will show that generally speaking not more than 3 to 4 per cent of the employees retire each year. Calculating the burden on the basis of such practical approach as it should be no reason was shown in the instant case to interfere with the finding of the Industrial Tribunal that the appellant employer had the financial capacity to bear the burden."

In the case of Wenger and Co. and others and their workmen, 1963-II-LLJ, 403, their Lordships of the Supreme Court observed :—

> "Besides in dealing with the financial obligation involved by the introduction of the gratuity scheme it is necessary to bear in mind that the magnitude of the theoretical impact does not matter so much as the extent of the actual impact of the scheme. There are two ways of looking at the problem of the burden imposed by the gratuity scheme. One is to capitalize the burden on actual basis and that would naturally show theoretically that the burden would be very heavy ; the other is to look at the scheme in its practical aspect and this would show that, speaking broadly, no more than 3 or 4 per cent of the employees retire every year. It is desirable that in assessing the impact of the gratuity scheme on the financial position of the employer, this practical approach should be taken into account."

It is also to be taken into consideration that the payment made by the management as gratuity in each year will be allowed as a legal deduction in the income tax assessments and would to that extent reduce the income tax payable by the concern or its partners and

this will reduce the burden of the scheme at least to some extent. The workmen have asked for a scheme in which no ceiling is proposed and by which all the workmen who are retrenched or even dismissed will be able to claim gratuity. Taking all the circumstances into consideration I do not agree to introduce the said scheme in this concern and would like to introduce a scheme which places much lighter burden on the management and which in my opinion the management is able to bear. I am definitely of the opinion that the unit in question is in a financial position to bear the burden of the scheme which I propose to introduce and which is as under :—

Scheme.—The workmen of the concern will be entitled to the payment of gratuity on the following basis :—

(1) In case of death of an employee while he is in service of the concern or his becoming incapable of serving any further due to physical disability or mental disability, 15 days' consolidated wages for each year of service. In case of death the gratuity will be payable to the heirs or assigns of the deceased workman.

(2) In case of termination of an employee's service by the concern after he has put in 5 years' service, 8 days' consolidated wages for each year of service.

(3) No gratuity will be payable to an employee who resigns his job. But if he has served for 15 years continuously and is rendered unfit to serve further on account of his old or protacted ill-health he shall be paid gratuity calculated at the rate of 15 days' consolidated wages for each completed year of his service.

(4) No gratuity will be payable to an employee who is dismissed for misconduct.

(5) The maximum amount of gratuity payable to any employee shall not exceed 7½ months' consolidated wages.

The management shall enforce the above gratuity scheme in this concern retrospectively with effect from the date of the present reference, i.e., 21st January, 1967 and it shall be deemed to have come into operation on the said date. No order as to costs.

K. L. GOSAIN,
Presiding Officer,
Dated 6th July, 1967. Industrial Tribunal, Haryana, Chandigarh.

No. 904, dated Chandigarh, the 7th July, 1967

The award be submitted to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required by section 15 of the Industrial Disputes Act, 1947.

K. L. GOSAIN,
Presiding Officer,
Industrial Tribunal, Haryana, Chandigarh.

P.N. BHALLA, Secy.

The 5th/10th July, 1967

No. 6060-1 Lab-67/12916.—On his appointment as Labour Commissioner, Haryana, Shri S. K. Misra, I. A. S., has resumed the charge of the post on the 3rd July, 1967 (forenoon).

S. G. SUNDARAM, Dy Secy.

3329CS(H)—25-7—67—Govt. Press, Chd.